

108TH CONGRESS
2D SESSION

H. R. 4112

To establish consumer protections, including disclosure requirements, relating to funeral service contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2004

Mr. FOLEY introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To establish consumer protections, including disclosure requirements, relating to funeral service contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Death Care
5 Disclosure Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act the following definitions apply:

8 (1) **ALTERNATIVE CONTAINER.**—The term “al-
9 ternative container” means an unfinished wooden
10 box or other nonmetal receptacle or enclosure, with-

1 out ornamentation or a fixed interior lining, which
2 is designed for the encasement of human remains
3 and which is made of fiberboard, pressed-wood, com-
4 position materials (with or without an outside cov-
5 ering), or similar materials.

6 (2) ARRANGEMENT SERVICES FEE.—The term
7 “arrangement services fee” means a reasonable fee
8 that—

9 (A) is charged to cover professional and
10 overhead costs, including staff time dedicated to
11 conducting arrangement conferences, imple-
12 menting arrangement instructions, obtaining
13 permits or other authorizations, preparing no-
14 tices for newspapers, coordinating with clergy
15 and monument dealers, and similar activities;
16 and

17 (B) is—

18 (i) calculated at an hourly rate; or

19 (ii) a series of flat-rate fees for spe-
20 cific arrangements made by a funeral serv-
21 ice provider.

22 (3) CASH ADVANCE ITEM.—The term “cash ad-
23 vance item” means any item of service or merchan-
24 dise described to a purchaser as a cash advance, ac-
25 commodation, cash disbursement, or similar term. A

1 cash advance item includes any item obtained from
2 a third party and paid for by the funeral provider
3 on the purchaser's behalf. Cash advance items in-
4 clude cemetery or crematory services, pallbearers,
5 public transportation, clergy honoraria, flowers, mu-
6 sicians, singers, nurses, permit fees, obituary no-
7 tices, gratuities, and death certificates.

8 (4) CASKET.—The term “casket” means a rigid
9 container which is designed for the encasement of
10 human remains and which is usually constructed of
11 wood, metal, fiberglass, plastic, or like material, and
12 ornamented and lined with fabric.

13 (5) COMMISSION.—The term “Commission”
14 means the Federal Trade Commission.

15 (6) CREMATION.—The term “cremation” means
16 a heating process which incinerates human remains.

17 (7) CREMATORY.—The term “crematory”
18 means any person, partnership, or corporation that
19 performs cremation.

20 (8) DECEPTIVE PRACTICE.—The term “decep-
21 tive practice” means an unfair or deceptive act or
22 practice in or affecting commerce that violates sec-
23 tion 5(a) of the Federal Trade Commission Act (15
24 U.S.C. 45(a)).

1 (9) DIRECT CREMATION.—The term “direct
2 cremation” means a disposition of human remains
3 by cremation without formal viewing, visitation, or
4 ceremony with the body present.

5 (10) FUNERAL CEREMONY.—The term “funeral
6 ceremony” means a service commemorating a de-
7 ceased person that occurs with the body of the de-
8 ceased person present.

9 (11) FUNERAL GOODS.—The term “funeral
10 goods” means goods which are sold or offered for
11 sale directly to the public for use in connection with
12 funeral services.

13 (12) FUNERAL PROVIDER.—The term “funeral
14 provider” means any person, partnership, or cor-
15 poration that sells or offers to sell funeral goods or
16 funeral services to the public.

17 (13) FUNERAL SERVICES.—The term “funeral
18 services” means—

19 (A) any services which may be used to—

20 (i) care for and prepare deceased
21 human bodies for burial, cremation, or
22 other final disposition; and

23 (ii) arrange, supervise, or conduct the
24 funeral ceremony or the final disposition of
25 deceased human bodies; and

1 (B) services provided by funeral directors,
2 morticians, cemeterians, cremationists, and me-
3 morial retailers.

4 (14) IMMEDIATE BURIAL.—The term “imme-
5 diate burial” means a disposition of human remains
6 by burial, without formal viewing, visitation, or cere-
7 mony with the body present, except for a graveside
8 service.

9 (15) MEMORIAL SERVICE.—The term “memo-
10 rial service” means a ceremony commemorating the
11 deceased without the body present.

12 (16) MEMORIAL RETAILER.—The term “memo-
13 rial retailer” means a person who sells or offers to
14 sell to the public any memorial intended to mark the
15 location of the internment of human remains.

16 (17) OUTER BURIAL CONTAINER.—The term
17 “outer burial container” means any container which
18 is designed for placement in the grave around the
19 casket including, but not limited to, containers com-
20 monly known as burial vaults, grave boxes, and
21 grave liners.

22 (18) PRENEED CONTRACT.—The term “preneed
23 contract” means a funeral contract arranged for and
24 paid, in part or in full, prior to an anticipated death.

1 (19) PURCHASER OF FUNERAL GOODS OR FU-
2 NERAL SERVICES.—The terms “purchaser of funeral
3 goods or funeral services” and “purchaser” mean
4 any person who—

5 (A) purchases funeral goods or funeral
6 services from a funeral provider; or

7 (B) contacts a funeral provider, in any
8 manner, including in person, by telephone, by
9 mail, or electronically, to obtain information re-
10 lated to purchasing funeral goods or funeral
11 services.

12 (20) REQUEST FOR INFORMATION RELATED TO
13 FUNERAL GOODS OR FUNERAL SERVICES.—The term
14 “request for information related to funeral goods or
15 funeral services” means any inquiry made by a per-
16 son to a funeral provider for information related to
17 such goods or services. Such request may be made
18 in person, in writing, by telephone, or electronically.

19 **SEC. 3. PRICE DISCLOSURES.**

20 (a) DECEPTIVE PRACTICES.—It shall be a deceptive
21 trade practice under section 5(a) of the Federal Trade
22 Commission Act (15 U.S.C. 45(a)) for a funeral provider
23 to fail to provide, in a timely manner—

24 (1) in response to a request for information re-
25 lated to funeral goods or funeral services—

1 (A) accurate, printed information regard-
2 ing the price of the funeral goods and funeral
3 services described in subsection (b); and

4 (B) the printed disclosures described in
5 subsection (c); or

6 (2) in response to a specific request for the
7 prices of caskets, alternative containers, or outer
8 burial containers, a list of the prices of each model
9 of casket, alternative container, or outer burial con-
10 tainer that the funeral provider offers for sale.

11 (b) FUNERAL GOODS AND FUNERAL SERVICES.—

12 The price of funeral goods and funeral services referred
13 to in subsection (a)(1)(A) means the retail price, ex-
14 pressed as a flat fee or a price per hour, mile, or other
15 unit, of all funeral goods and services offered by a funeral
16 provider, including the following:

17 (1) Embalming.

18 (2) Transportation of remains.

19 (3) The use of facilities.

20 (4) Staff attendance at meetings, gatherings, or
21 services.

22 (5) Equipment usage or rental.

23 (6) Casket and alternative containers.

24 (7) Outer burial container.

25 (8) Immediate burials.

1 (9) Direct cremations.

2 (10) Crematory services.

3 (11) Viewing, without embalming.

4 (12) Insurance or benefit processing fee.

5 (13) Internment rights.

6 (14) Opening and closing charges.

7 (15) Monuments, markers, or memorials.

8 (c) DISCLOSURES.—The disclosures referred to in
9 subsection (a)(1)(B) are the following disclosures:

10 (1) The name, address, and telephone number
11 of the funeral provider’s place of business.

12 (2) The effective date of any prices provided.

13 (3) The following statement: “For information
14 on the purchase of funerals and consumer rights or
15 to file a complaint, you may contact
16 _____.”, with the blank space being filled
17 with the name, address, phone number, and other
18 relevant information for contacting the State agency
19 or agencies responsible for handling consumer in-
20 quiries and complaints pertaining to death care serv-
21 ice providers.

22 (4) Contact information, including a toll-free
23 number, for an agency that provides information re-
24 lated to veteran’s benefits.

1 (5) In immediate conjunction with the price of
2 embalming, the following statements:

3 (A) “Except in certain special cases, em-
4 balming is not required by law. Embalming may
5 be necessary, however, if you select certain fu-
6 neral arrangements, such as a funeral with
7 viewing. If you do not want embalming, you
8 usually have the right to choose an arrange-
9 ment that does not require you to pay for it,
10 such as direct cremation, immediate burial, or
11 other timely disposition.”. The phrase “except
12 in certain special cases” shall not be included in
13 the disclosure if State or local law in the area
14 where the provider does business does not re-
15 quire embalming under any circumstances.

16 (B) “If you selected a funeral that may re-
17 quire embalming, such as a funeral with view-
18 ing, you may have to pay for embalming. You
19 do not have to pay for embalming you did not
20 approve if you selected arrangements such as a
21 direct cremation or immediate burial. If we
22 charged for embalming, we will explain why
23 below.”.

24 (6) In immediate conjunction with the price of
25 direct cremations, the following disclosure: “If you

1 want to arrange a direct cremation, you can use an
2 alternative container. Alternative containers encase
3 the body and can be made of materials like fiber-
4 board or composition materials (with or without an
5 outside covering). The containers we provide are
6 _____.”, with the blank space being filled
7 with a description of the container and its construc-
8 tion.

9 (7) In immediate conjunction with the price of
10 any outer burial container, the following disclosure:
11 “In most areas of the country, State or local law
12 does not require that you buy a container to sur-
13 round the casket in the grave. However, many ceme-
14 teries require that you have such a container so that
15 the grave will not sink or settle. Either a grave liner
16 or a burial vault will satisfy these requirements.”.
17 The phrase “in most areas of the country” shall not
18 be included in this disclosure if State or local law in
19 the area where the provider does business does not
20 require a container to surround the casket in the
21 grave.

22 (8) In immediate conjunction with the price of
23 any casket or sealer casket, the following disclosure:
24 “There is no scientific or other evidence that any

1 casket with a sealing device will preserve human re-
2 mains.”

3 (d) **TIMELY MANNER.**—For the purposes of sub-
4 section (a), information is provided in a timely manner
5 if it is provided to the purchaser of funeral goods or fu-
6 neral services at the first opportunity, which may not be
7 later than the first selling, showing, or making any rep-
8 resentation about any funeral goods or funeral services.

9 (e) **SPECIFIC APPLICATION.**—The requirements of
10 subsection (a) apply to every communication between a fu-
11 neral provider and a purchaser of funeral goods or funeral
12 services, except an in-person request made by a funeral
13 provider for authorization to embalm at the time a de-
14 ceased human body is removed for transportation.

15 **SEC. 4. STATEMENT OF FUNERAL GOODS AND SERVICES**
16 **SELECTED.**

17 (a) **IN GENERAL.**—It shall be a deceptive trade prac-
18 tice under section 5(a) of the Federal Trade Commission
19 Act (15 U.S.C. 45(a)) for a funeral provider to fail to give
20 an itemized written statement for retention to a purchaser
21 of funeral goods or funeral services at the conclusion of
22 the discussion related to such goods and services and prior
23 to providing any services beyond taking possession of a
24 deceased human body for authorized embalming. The
25 statement shall include the following information:

1 (1) The funeral goods and funeral services se-
2 lected by the purchaser and the prices to be paid for
3 each good or service.

4 (2) A specific itemization of cash advance items
5 to the extent then known or reasonably ascertain-
6 able. If the prices are not known or reasonably as-
7 certainable, a good faith estimate shall be given and
8 a written statement that the actual charges shall be
9 provided before the final bill is paid.

10 (3) The total cost of the goods and services se-
11 lected.

12 (4) If a sealer casket is selected by the pur-
13 chaser, the following disclosure: “This product is not
14 designed or intended to preserve human remains,
15 and may under certain circumstances accelerate the
16 decomposition of the body.”

17 (b) PLACEMENT OF INFORMATION.—The information
18 required by subsection (a) shall be included on any con-
19 tract, statement, or other document which the funeral pro-
20 vider would otherwise provide at the conclusion of a dis-
21 cussion related to funeral goods or funeral services.

22 **SEC. 5. MISREPRESENTATIONS.**

23 It shall be a deceptive trade practice under section
24 5(a) of the Federal Trade Commission Act (15 U.S.C.
25 45(a)) for a funeral provider to—

1 (1) inaccurately represent that Federal, State,
2 or local law or industry custom requires the pur-
3 chase of any funeral goods or funeral services, in-
4 cluding to inaccurately represent that—

5 (A) State or local law requires that a de-
6 ceased person be embalmed;

7 (B) State or local law requires a casket for
8 direct cremation; or

9 (C) a particular cemetery requires outer
10 burial containers;

11 (2) fail to identify and briefly describe in writ-
12 ing on the statement of funeral goods and funeral
13 services selected any legal requirement which the fu-
14 neral provider represents to a person as compelling
15 the purchase of funeral goods or funeral services for
16 the funeral which that person is arranging;

17 (3) fail to disclose that embalming is not re-
18 quired for—

19 (A) direct cremation;

20 (B) immediate burial; or

21 (C) a closed casket funeral without viewing
22 or visitation when refrigeration is available and
23 when State or local law does not require em-
24 balming; or

1 (4) inaccurately represent the ability of funeral
2 goods or funeral services to delay the natural decom-
3 position of human remains for a long-term or indefi-
4 nite time.

5 **SEC. 6. REQUIRED PURCHASE OF FUNERAL GOODS OR FU-**
6 **NERAL SERVICES.**

7 (a) OTHER REQUIRED PURCHASES OF FUNERAL
8 GOODS OR FUNERAL SERVICES.—It shall be a deceptive
9 trade practice under section 5(a) of the Federal Trade
10 Commission Act (15 U.S.C. 45(a)) for a funeral provider
11 to—

12 (1) condition the furnishing of any funeral good
13 or funeral service to a person arranging a funeral on
14 the purchase of any other funeral good or funeral
15 service, except as required by law or as otherwise
16 permitted by this Act;

17 (2) charge any fee as a condition to furnishing
18 any funeral goods or funeral services to a person ar-
19 ranging a funeral, other than—

20 (A) the fees for specific funeral services
21 and funeral goods selected by the purchaser;

22 (B) the fees for other funeral goods or fu-
23 neral services required to be purchased, as ex-
24 plained on the itemized statement in accordance
25 with section 4(a); or

1 (C) an arrangement services fee that—

2 (i) is disclosed as being either an
3 hourly rate fee described in clause (i) of
4 section 2(2)(B) or a flat fee described in
5 clause (ii) of such section; and

6 (ii) is elected by the purchaser;

7 (3) fail to place—

8 (A) immediately above the prices disclosed
9 as described in section 3(a), the following dis-
10 closure: “The goods and services shown below
11 are those we can provide to our customers. You
12 may choose the items you desire. If legal or
13 other requirements mean you must buy any
14 item that you do not specifically request, we will
15 explain the reason in writing on the statement
16 we provide describing the funeral goods and
17 services you selected.”; or

18 (B) in the statement of funeral goods and
19 services selected, as described in section
20 4(a)(1), the following disclosure: “Charges are
21 only for those items that you selected or that
22 are required. If we are required by law or by a
23 cemetery or crematory to use any items, we will
24 explain the reasons in writing below.”.

1 (b) EXCEPTION.—A funeral provider shall not be
2 treated as violating this section, if the funeral provider
3 fails to comply with a request for a combination of goods
4 or services which would be impossible, impractical, or ex-
5 cessively burdensome to provide.

6 **SEC. 7. SERVICES PROVIDED WITHOUT PRIOR APPROVAL.**

7 (a) DECEPTIVE PRACTICES.—It shall be a deceptive
8 trade practice under section 5(a) of the Federal Trade
9 Commission Act (15 U.S.C. 45(a)) for a funeral provider
10 to embalm a deceased human body unless—

11 (1) State or local law or regulation requires em-
12 balming in the particular circumstances regardless
13 of any funeral choice which the family might make;

14 (2) prior approval for embalming has been ex-
15 pressly obtained from a family member or other au-
16 thorized person;

17 (3) the funeral provider is unable to contact the
18 family member or other authorized person after ex-
19 ercising due diligence and reasonably believes the
20 family wants embalming performed; or

21 (4) refrigeration is necessary and is not avail-
22 able in the community where the provider does busi-
23 ness.

24 (b) DISCLOSURE REQUIRED.—In seeking the ap-
25 proval required by subsection (a)(2), the funeral provider

1 shall disclose that a fee will be charged if the family or
2 other authorized person selects a funeral which requires
3 embalming, such as a funeral with a public or private
4 viewing, and that no fee will be charged if the family or
5 other authorized person selects a service which does not
6 require embalming, such as direct cremation or immediate
7 burial.

8 **SEC. 8. RETENTION OF DOCUMENTS.**

9 A funeral provider shall retain and make available for
10 inspection by the Commission true and accurate copies
11 of—

12 (1) the price lists required by section 3(a) for
13 at least 1 year after the date of the last distribution
14 of such lists to customers; and

15 (2) each statement of funeral goods and serv-
16 ices selected, as required by section 4, for at least
17 1 year from the date of arranging a funeral or me-
18 morial services.

19 **SEC. 9. COMPREHENSION OF DISCLOSURES.**

20 A funeral provider shall make the disclosures re-
21 quired by this Act in a clear and conspicuous manner
22 using type that is not smaller than 12 points in size. A
23 funeral provider shall not include in any price list, a state-
24 ment or information that alters or contradicts the infor-
25 mation required by this Act to be included in those lists.

1 **SEC. 10. PROHIBITED SALES PRACTICES.**

2 (a) IN GENERAL.—Each of the following sales prac-
3 tices shall be a deceptive trade practice under section 5(a)
4 of the Federal Trade Commission Act (15 U.S.C. 45(a)):

5 (1) Unsolicited telephone offers to sell funeral
6 goods, funeral services, crematory services, inter-
7 ment rights, or other cemetery and memorialization
8 goods and services.

9 (2) Door-to-door direct offers to sell funeral
10 goods, funeral services, crematory services, inter-
11 ment rights, or other cemetery and memorialization
12 goods and services.

13 (b) IDENTIFICATION OF AFFILIATION.—A person
14 who is an operator, funeral provider, funeral director, em-
15 balmer, or memorial dealer shall—

16 (1) state the person's affiliation with any pub-
17 licly traded company in all contracts and on all busi-
18 ness letterhead, advertising, and marketing mate-
19 rials; and

20 (2) state the person's licensed business location
21 in all directories, advertising, and marketing mate-
22 rials in which offsite telephone numbers are used.

23 **SEC. 11. CASH ADVANCE PROVISIONS.**

24 It shall be a deceptive trade practice under section
25 5(a) of the Federal Trade Commission Act (15 U.S.C.
26 45(a)) for a funeral provider to—

1 (1) represent that the price charged for a cash
 2 advance item is the same as the cost to the funeral
 3 provider for the item when such is not the case;

4 (2) fail to disclose to a person arranging a fu-
 5 neral that the price being charged for a cash ad-
 6 vance item is not the same as the cost to the funeral
 7 provider for the item when such is the case; or

8 (3) fail to place in the itemized statement of fu-
 9 neral goods and funeral services selected, in imme-
 10 diate conjunction with the list of itemized cash ad-
 11 vance items required by section 4(a)(2), the fol-
 12 lowing statements:

13 (A) “We charge for our services in obtain-
 14 ing _____.”, with the blank space being
 15 filled with a list of cash advance items, if the
 16 funeral provider marks up the price for or re-
 17 ceives and retains a rebate, commission, or
 18 trade or volume discount on a cash advance
 19 item.

20 (B) “You have the right to arrange for the
 21 purchase of these items on your own behalf.”.

22 **SEC. 12. CONSUMER PROTECTIONS IN PRENEED AND PRE-**
 23 **PAID FUNERAL SERVICE TRANSACTIONS.**

24 It shall be a deceptive trade practice under section
 25 5(a) of the Federal Trade Commission Act (15 U.S.C.

1 45(a)) for a funeral provider to fail to comply with the
2 following prepaid contract requirements:

3 (1) Prepaid contracts shall conform to all appli-
4 cable Federal and State statutes and regulations.

5 (2) Prepaid contracts shall be written in plain
6 English, and clearly state the merchandise and serv-
7 ices that purchasers are buying and their prices. Use
8 of legal or industry-specific jargon shall be avoided
9 to the extent possible.

10 (3) Charges for funeral goods or funeral serv-
11 ices shall be itemized. The itemization shall be in
12 greater detail than a recitation of prices and shall
13 include a complete description of the services to be
14 rendered and an unambiguous description of the
15 merchandise to be delivered.

16 (4) When prices of merchandise or services to
17 be delivered in the future are not guaranteed, or an
18 additional payment may be required in the future, a
19 statement to that effect shall be included in the pre-
20 pared contract and initialed by the purchaser.

21 (5) The contract must clearly state what hap-
22 pens if merchandise is not available at delivery time
23 and substitution is necessary. The description of the
24 merchandise shall be sufficiently complete for the
25 person authorized to make funeral arrangements to

1 make a decision, based on objective criteria, about
2 the comparability of a needed substitution.

3 (6) No substitution shall be made without the
4 consent of the purchaser, or upon the purchaser's
5 death, the person authorized to make funeral ar-
6 rangements. A prepaid contract must contain a pro-
7 vision, which is initialed by the purchaser, either
8 prohibiting any changes, or, alternatively, specifying
9 what instructions may be modified and by whom.

10 (7) There shall be an explanation of how the
11 purchaser's funds will be protected to assure the
12 seller's performance in compliance with the pre-
13 vailing prepaid contract law. The name of the insti-
14 tution where funds will be deposited in escrow must
15 be disclosed. The buyer must receive an annual re-
16 port from the escrow agent. An administrative fee,
17 not to exceed 1 percent of the contract, may be with-
18 drawn annually by the escrow agent.

19 (8) The prepaid contract shall provide for can-
20 cellation and refund or transfer of the contract with
21 no loss of benefits paid by the purchaser along with
22 accrued interest.

23 (9) A prepaid contract may be made irrevocable
24 only when the beneficiary will be applying for med-
25 icaid or other social benefits within the next 6

1 months. The irrevocability of the prepaid contract
2 shall not affect the right of the purchaser to change
3 the provider.

4 (10) Copies of the prepaid contract and supple-
5 mental material, such as information on credit life
6 insurance and transfer or exchange plans, shall be
7 provided to the purchaser at the time of the preneed
8 sale.

9 (11) Copies of the prepaid contract and at-need
10 documentation shall be provided to the person au-
11 thorized to make the final funeral arrangements at
12 the time of death to ensure that the merchandise
13 and services match those specified in the prepaid
14 contract. A list of items substituted shall be in writ-
15 ing and included in the at-need documentation.

16 (12) Copies of all prepaid contracts and at-need
17 documentation shall be retained by the seller for a
18 period of 1 year after performance of the contract.

19 **SEC. 13. CONSUMER DISCLOSURES IN PREPAID CON-**
20 **TRACTS.**

21 Not later than 1 year after the date of enactment
22 of this Act, the Commission shall establish minimum
23 standards and requirements with respect to State man-
24 dated consumer disclosures in prepaid contracts for the

1 purchase of funeral, cemetery, or crematory goods or serv-
2 ices, including—

3 (1) basic information identifying the seller, the
4 purchaser, the entity that will provide the goods and
5 services (if different from the seller), the prices of
6 the goods and services being purchased on an
7 itemized basis, and the total price of the purchase;

8 (2) funding information disclosing where, how,
9 and with whom the prepaid funds will be deposited
10 and invested, and what portion of the prepaid funds,
11 if any, will be paid to the seller prior to the perform-
12 ance of the contract;

13 (3) price and payment disclosures regarding to
14 what extent the prices of the goods and services are
15 guaranteed or not guaranteed, who is responsible for
16 any payment shortfalls, and who is entitled to re-
17 ceive excess funds; and

18 (4) cancellation and transfer information dis-
19 closing whether the consumer may cancel or transfer
20 the prepaid contract, the method for exercising such
21 rights, the amount of revocation or transfer fees, if
22 any, retained by the seller, and safeguards for the
23 consumer if the seller is unable to provide the goods
24 and services in the contract.

1 **SEC. 14. PRIVATE RIGHT OF ACTION.**

2 In addition to the remedies identified in the Federal
3 Trade Commission Act (15 U.S.C. 41 et seq.), a person
4 who is injured by a violation of this Act may commence
5 a civil action against the funeral provider. Such person
6 shall be entitled to recover the greater of actual damages
7 or \$5,000 for each violation proved by a preponderance
8 of the evidence.

9 **SEC. 15. ENFORCEMENT BY THE COMMISSION.**

10 The Commission shall enforce the provisions of this
11 Act in the same manner, by the same means, and with
12 the same jurisdiction, powers, and duties as though all ap-
13 plicable terms and provisions of the Federal Trade Com-
14 mission Act (15 U.S.C. 41 et seq.) were incorporated into
15 and made a part of this Act.

16 **SEC. 16. ADMINISTRATION AND RULEMAKING.**

17 (a) ADMINISTRATION.—The provisions of this Act
18 shall be administered by the Commission.

19 (b) RULEMAKING.—Notwithstanding any other provi-
20 sion of law, the Commission may prescribe rules in accord-
21 ance with section 553 of title 5, United States Code (com-
22 monly known as the “Administrative Procedure Act”) to
23 carry out the provisions of this Act.

1 **SEC. 17. STATE EXEMPTIONS.**

2 A provision of this Act, or a regulation issued by the
3 Commission pursuant to this Act, shall not be in effect
4 in a State if—

5 (1) the appropriate State agency requests such
6 provision or regulation not be in effect in the State;

7 (2) there is a State requirement in effect that
8 applies to a transaction to which the provision or
9 regulation applies;

10 (3) the State requirement affords an overall
11 level of protection to consumers that is equal to, or
12 exceeds, the level of protection afforded by the provi-
13 sion or regulation; and

14 (4) the Commission determines that the State
15 is administering and enforcing the State require-
16 ment in a manner that affords a level of protection
17 to consumers that is equal to or exceeds the level of
18 protection afforded by the Commission's enforce-
19 ment of such provisions or regulations.

20 **SEC. 18. DECLARATION OF INTENT.**

21 This Act does not apply to the business, or acts in
22 the conduct of the business, of insurance.

1 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Fed-
3 eral Trade Commission \$5,000,000 for each of fiscal years
4 2005 through 2010 to carry out this Act.

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